IN THE
SUPREME COURT OF MISSOURI

No. SC84816

BUCHHOLZ MORTUARIES, INC.,

Respondent (Petitioner below),

v.

DIRECTOR OF REVENUE,
STATE OF MISSOURI,

Appellant (Respondent below).

Petition For Review
From The Administrative Hearing Commission,
The Honorable Karen A. Winn, Commissioner

Appellant's Brief

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Jurisdictional Statement

This case arises out of a Petition for Review of a decision of the Administrative Hearing Commission in a revenue case. *See* §§ 621.050 and 621.189, RSMo 2000.[1] The case involves construction of §§ 144.020, 144.021 and 144.010.1(10), regarding whether sales of caskets and outer burial containers constitute sales at retail of tangible personal property. Because the case involves construction of revenue laws of this state, this Court has exclusive appellate jurisdiction. Article V, Section 3, Missouri Constitution (as amended, 1982).

[1]All further citations are to RSMo 2000, unless otherwise indicated.

Statement of Facts

On or before January 31, 2001, Buchholz Mortuaries, Inc., filed a claim with the Department of Revenue for refund of Missouri sales tax (LF 13; Joint Exhibit 1 – hereinafter "J. Exh. 1"– at Attachment A). Specifically, Buchholz sought a refund of sales tax it collected from its customers, and remitted to the Department, on sales of caskets and outer burial containers ("containers") in a total amount of $101,819.72 (LF 14; J. Exh. 1 at 1). The Director of the Department denied Buchholz's refund claim (LF 14; J. Exh. 1 at 1).

The Administrative Hearing Commission, Commissioner Karen A. Winn presiding, heard the matter on April 22, 2002 (Tr. 1, 5). The case was tried largely on stipulated facts and exhibits (Tr. 6; J. Exh. 1). The parties' Stipulation of Facts explained, generally, the provision of funeral services, caskets and containers and the distinction between the two, service, interment and burial, and the procedural history surrounding Buchholz's refund claim (J. Exh. 1 at 1-7). The Commission adopted these stipulated facts virtually in their entirety, though it rearranged them somewhat (*Compare* LF 9-23 with J. Exh. 1).

Also at the hearing before the Commission, Buchholz called two witnesses - James Buchholz, a funeral director, and Steven Sell, owner of a cemetery, a mausoleum, a crematory, and a funeral home, and a member of Associated Cemeteries of Missouri and the Missouri Funeral Directors Association (Tr. 13, 53-54). This evidence from the hearing, and the parties' stipulated facts, showed the following:

Buchholz provides funeral services in the St. Louis area (LF 9; J. Exh. 1 at 1). Customers can choose various funeral services, separately or as part of funeral "packages" (LF 10; J. Exh. 1 at 2); *see also* Respondent's Exhibit A – hereinafter Resp. Exh. A (price list for Buchholz Mortuaries, Inc.). Customers can also expect Buchholz to provide a variety of services attendant to a funeral, such as consultation with family and clergy, preparation of necessary notices, authorizations and consents, and coordination with the container company and cemetery regarding gravesite placement of the container and casket, though Buchholz's role, and the role of their funeral director, does not extend to contracting with cemeteries to purchase burial plots or to purchasing burial plots on behalf of customers. (Tr. 14; LF 10; J. Exh. 1 at 2).

Buchholz and its customers enter into a funeral services contract that memorializes their agreement (LF 10; J. Exh. 1 at 3). Buchholz assumes responsibility, and risk of loss, from the time of collection of the remains through burial in the grave (LF 10; J. Exh. 1 at 3).

Buchholz also sells caskets and containers (LF 11; J. Exh. 1 at 2). Caskets hold the remains and containers, in turn, house the caskets (LF 11; J. Exh. 1 at 3-4). There are two types of containers - vaults and concrete boxes (LF 11; J. Exh. 1 at 4). Containers are not required by law, but many cemeteries require their use (Tr. 28).

In anticipation of burial, Buchholz contacts the cemetery which then excavates the gravesite (LF 12; J. Exh. 1 at 5). The holes are usually 6½ feet deep. *Id.*

Before any visitation, service, or burial, Buchholz places the deceased's remains in the customer's chosen casket (LF 12; J. Exh. 1 at 3). Visitation, religious services and burial can

then occur. Buchholz is required to insure that the remains, and their transport, storage, and burial are handled in a way that comports with state statutes and regulations that govern funeral directors and their provision of funeral services (Tr. 15-16, 20-21). Within that realm, the customer can choose how to proceed (Tr. 15, 22-27, 45). For example, the customer decides if there will be visitation or not, and when; the customer decides whether religious services will be held and, if so, the denomination of and location for those religious observances; and the cemetery and type and location of burial. *Id.*

At the gravesite, the container is placed in the grave and the casket containing the remains is placed in the container (LF 12-13; J. Exh. 1 at 4-5). The container is then closed or sealed, depending upon container type, and the cemetery backfills the hole. *Id.*

Remains may be removed, or disinterred, though this is very rare (LF 13; Tr. 45, 48). When remains are removed, the entire container can be removed with the casket in it (LF 13; Tr. 45, 57-58). Any such removal must be done with special earth-moving equipment (LF 13). For 99¾% of Buchholz's customers, interment is intended to be permanent (LF 5; Tr. 48).

After hearing evidence, and receiving briefs from the parties, the Commission ruled in Buchholz's favor on August 29, 2002 (LF 9). Because in ¼% of the cases, Buchholz's customers did not intend for interment to be permanent, the Commission reduced the requested refund amount by that percentage (LF 23). Therefore, the Commission granted Buchholz's refund claim in the amount of $101,565.17. *Id.*

On September 27, 2002, the Director filed her Petition for Review in this Court and this appeal ensues. Further facts will be developed, where relevant, in the argument section of the brief.

Point Relied On

The Administrative Hearing Commission erred in holding that Buchholz is owed a refund of sales tax for its sales of caskets and containers, because such sales constitute sales at retail under § 144.010.1(10) in that caskets and containers are personalty, not fixtures, nor do they become fixtures upon burial and, even if they do, the customer obtains an ownership interest upon purchase and upon placement of remains in the casket.

Marsh v. Spradling, 537 S.W.2d 402 (Mo. 1976)

Oberguerge Rubber Co. v. State Tax Comm'n of Missouri, 674 S.W.2d 186 (Mo. App., E.D. 1984)

Norwalk Vault Co. of Bridgeport v. Mountain Grove Cemetery Ass'n, 433 A.2d 979 (Conn. 1980)

Guthrie v. Weaver, 1 Mo. App. 136, 1876 WL 9555 (St. L. Ct. App. 1876)

Standard of Review

Decisions of the Missouri Administrative Hearing Commission are upheld if authorized by law and supported by competent and substantial evidence upon the record as a whole, and when not clearly contrary to the reasonable expectations of the General Assembly. *See Becker Elec. Co. v. Director of Revenue,* 749 S.W.2d 403, 405 (Mo. banc 1988); § 621.193, RSMo. 2000. The Commission's decisions as to questions of law are matters for this Court's independent judgment. *La-Z-Boy Chair Co. v. Director of Economic Development*, 983 S.W.2d 523, 524-25 (Mo. banc 1999); *Hewitt Well Drilling & Pump Service, Inc. v. Director of Revenue*, 847 S.W.2d 797, 797 (Mo. banc 1993).

Argument

The Administrative Hearing Commission erred in holding that Buchholz is owed a refund of sales tax for its sales of caskets and containers, because such sales constitute sales at retail under § 144.010.1(10) in that caskets and containers are personalty, not fixtures, nor do they become fixtures upon burial and, even if they do, the customer obtains an ownership interest upon purchase and upon placement of remains in the casket.

Introduction

The Commission found that Buchholz was entitled to a refund of sales tax paid by the customer, and remitted to the Department by Buchholz, because it found that when Buchholz sells caskets and containers, those items are fixtures and because Buchholz transferred title and ownership in these items after they were affixed to real property (LF 22-23). The Commission was largely wrong on both counts. Neither caskets nor containers are fixtures; the evidence showed that caskets and containers merely rest in and are not attached to each other or to the earth. Moreover, Buchholz always treated caskets and containers as personalty, not real property, until an outside advisor suggested otherwise. Finally, even if Buchholz retains title until after burial is completed, the customer long before that point obtains elements of dominion and control that are the hallmark of ownership. While the funeral business and funeral directors are heavily regulated, and while funeral directors and their customers are limited in what they can and cannot do with human remains, the customer still retains choice in the final arrangements for their loved ones and, thus, takes ownership well

before burial.

Underlying tax scheme

Section 144.020, RSMo 2000, provides, "A tax is hereby levied and imposed upon all sellers for the privilege of engaging in the business of selling tangible personal property . . . at retail in this state." (§ 144.020 is reproduced in the appendix to this brief). Section 144.021 makes plain that the intent of this sales tax is to impose a tax for the privilege of engaging in business in this state, and that the burden is upon the seller to collect the tax from the buyer and remit it to the Department (§ 144.021 is also reproduced in the appendix to this brief). Under this scheme, real property is not subject to sales tax.

Buchholz's argument before the Commission that the items purchased here were real property was twofold: 1) that the caskets and containers became fixtures when placed in the ground, and 2) the "sale at retail"[2] or transfer of title and ownership occurred after, not before the caskets and containers became affixed to the ground. As Buchholz's argument goes, the casket and container sales are fixtures that are real property, and thus are not subject to Missouri sales tax.

[2]A "sale at retail" is defined as "any transfer made by any person engaged in business as defined herein of the ownership of, or title to, tangible personal property to the purchaser." Section 144.010.1(10). (§ 144.010.1(10) is reproduced in the appendix to this brief).

Caskets and containers are not fixtures

This Court's opinion in *Marsh v. Spradling*, 537 S.W.2d 402 (Mo. 1976), sets forth the test to be applied in determining whether something is a fixture:

> A fixture is an article of personal property which has been so annexed to the real estate that it is regarded as a part of the land; its status may depend upon the facts and circumstances, but the principal elements for consideration are: (1) the annexation; (2) the "adaption" of the article to the location; and (3) the intent of the annexor at the time of the annexation.

Id. at 404.

To annex something to real property is to attach it to real property. *See* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 87 (1993) (defining "annex" as "to bind to" and "to tie, bind, alter"). Caskets and containers are not attached in any way to anything – they are not attached to the earth, nor is the casket attached to the container. (Tr. 52-53). Rather, containers merely rest in the earth, and containers are merely vessels in which the caskets rest, just as caskets are vessels in which remains rest. Caskets and containers, therefore, are no more annexed to real estate than remains are attached or annexed to caskets. That the caskets and containers rest a substantial depth below the surface of the earth does not change this. That they may be covered by a lot of dirt likewise does not annex them to the real estate either.

True, several feet of earth makes it difficult to remove a casket and container, but gravesites can be disinterred and caskets and containers removed (Tr. 45, 48, 57-58). Though

containers may be rendered useless when and if their seals are breached during the removal process (Tr. 57-58), the record reflects no such destruction of caskets or their value upon disinterment.

Finally, while disinterment may require special earth-moving equipment (LF 13), and require a lot of dirt to be moved around, there is no evidence that removal of a casket and container does anything to damage the resulting earth – again, disinterment just requires displacing it, or moving it around, but its essential character remains the same. The record does not reflect any contamination of surrounding soils or anything of that nature. "In determining whether or not an article is a fixture the courts frequently mention whether or not it may be removed without the infliction of significant damage to the land." *Wisdom d/b/a Wisdom Oil Co. v. Rollins,* 664 S.W.2d 37, 39 (Mo. App., S.D. 1984). No significant damage to the land results from re-digging or slightly enlarging a pre-existing hole, and backfilling it again.

As to the next factor, adaption or adaptation, the Commission concluded that, "[a]daptation is the construction of the site or the item for affixation." (LF 18, *citing Oberguerge Rubber Co. v. State Tax Comm'n of Missouri,* 674 S.W.2d 186, 188 (Mo. App., E.D. 1984)). In the *Oberjuerge* facts, adaptation was shown because the building was constructed specifically so that the cranes (the alleged fixtures) could be used inside and the cranes performed an important function in the building and were thus "adapted to the proper use of the building and fulfill part of the special object and design for which the building was constructed." *Id.*

Caskets and containers, in contrast, are not specially adapted to the real estate, nor is the real estate adopted to the caskets, unlike the cranes and building in *Oberjuerge*. While graves are meant to receive containers and caskets (*See* LF 18), graves are standard sizes (Tr. 35-36). Likewise, caskets and containers are generally standard sizes and require no modification; the caskets are not generally altered for different body sizes, and the containers are not generally altered to accommodate larger than standard sized caskets or to take into account the topography of the burial area (*e.g.*, level versus inclined) (Tr. 36-38).

The Commission, however, found adaptation existed because "[i]t is common knowledge that a cemetery is designed as a place for digging graves, graves for receiving caskets, and caskets for holding dead bodies" (LF 18). Of course, all things exist for the purpose for which they are created; were this the test for adaptation, all things are adapted to the use to which they were designed to be put. Rather, as the facts of *Oberjuirge* demonstrate, the question is whether and to what extent an item has been specifically designed, created, or altered to be attached to real estate, and the extent to which the real estate has been altered to accommodate the item. Under this test, there is no adaptation here.

Intent, the final factor, is also the most influential – "did the annexor intend to make it a permanent accession to the land?" *Marsh v. Spradling*, 537 S.W.2d at 404. A person's acts and conduct generally reveal one's intent, and courts will not look to any "secret intention." *Id.* "An article may constitute a fixture although the annexation be slight." *Id*. at 405. The Commission addressed the "intent of the parties" and held that, "[w]e can think of nothing that any parties to a contract more surely intend to be permanently acceded to the land than the

mortal remains of the dead." (LF 19).

But this oversimplies. First, the cases that discuss the intent factor discuss not the intent of the "parties," but, rather, the intent of the annexor. And, to hear Buchholz tell it, Buchholz – not the customer – is the putative annexor. Buchholz puts the container and casket in the ground. Indeed, in an attachment to their application for refund Buchholz's admits as much: "Title to such funeral merchandise was transferred to customers after *Buchholz* attached the items to real estate." J.Exh. 1, Attachment A (emphasis supplied).

The relevant intent, therefore, is Buchholz's. And, as noted, acts and conduct point the way to the annexor's intent. Here, Buchholz – by its own statements and admissions – indicated that it always thought that the containers and caskets were sales of tangible, personal property until approached by an outside advisor in late 2001. *See* LF 23; J. Exh. 1, Attachment A – attachment to Form 472B ("Historically, Buchholz has paid sales tax on the full retail selling price of the funeral merchandise listed above. Buchholz recently received professional advice that its sale of caskets and outer burial containers should not be subject to sales tax because title to such merchandise does not transfer until after the items have become permanently affixed to real property (*i.e.*, after burial)") (emphasis is Buchholz's).

The Commission dismissed this, noting that "the history of [Buchholz's] tax advice is irrelevant." (LF 23). The significance of this, however, is not tax advice history, but rather how it sheds light on Buchholz's intent and how Buchholz – historically and during the claimed refund periods – treated the containers and caskets. Or, put another way, Buchholz's change in direction shows their intent prior to the time the company filed for a refund. And that intent

militates against any suggestion that the caskets or containers are fixtures. Buchholz paid sales tax on these items and, thus, intended that they be tangible, personal property.

Of course, were the taxpayer's intent always the dispositive factor, no taxpayer would ever be entitled to a refund under these circumstances, having paid the taxes, and treated the items as personalty, at the outset. But, when considering all the facts and factors together, neither containers nor caskets are fixtures.

One court, in *dicta*, has so suggested. In *Norwalk Vault Co. of Bridgeport v. Mountain Grove Cemetery Ass'n,* 433 A.2d 979 (Conn. 1980), the court held that double depth crypts were fixtures, in part because there was no evidence that the double depth crypts were removed upon disinterment. *Id*. at 982. Unless two bodies were to be disinterred simultaneously, "the crypt would have to remain installed in the grave in order to accommodate the remaining casket." *Id.*

As to other types of vaults, however, the court noted that it was not suggesting that all vaults necessarily became fixtures. *Id*. at 984, n.9. To the contrary, the court noted that

> [a]lthough the vault is intended to remain in the grave for as long as the deceased remains there, if it is shown that the vault was intended to be removed upon disinterment of the deceased, then the intent that the vault be permanently affixed, which is present in this case, would be missing. Similarly, a casket lowered into a vault would not become a fixture.

Id.

The Commission dismissed the Connecticut court's reasoning because "this record shows us that a container is never used without a casket. Therefore, we treat the items as a unit." (LF 18 at n. 10). But this record also shows that for disinterment and removal, "if you are going from one grave to another grave, we would try and keep the vault intact and just bury the same vault. Never would the vault be opened." (Tr. 57). This militates against affixation and allows this Court to reach the result alluded to by the Connecticut court.

The Commission, however, indicates that "Missouri case law expressly states that the accouterments of burial cease to be personal property when interred." (LF 19, *citing Guthrie v. Weaver*, 1 Mo. App. 136, 1876 WL 9555 (St. L. Ct. App. 1876)). But *Guthrie v. Weaver* involved "no dispute for the possession of a burial casket, but a contest for the mortal remains of the poor lady who lay, when the suit commenced, in the grave-yard at Bellefontaine." *Id.* at 140. In other words, the case was about the remains, not the casket. Moreover, to the extent the case – in *dicta* – may or may not suggest that caskets become fixtures, it also suggests that the family has an ownership interest until the moment of burial: "When a human body has been interred with the knowledge and consent of those who, up to that moment, may have owned the coffin and shroud, these articles are irrevocably consigned to the earth. . . ." *Id.* at 141.

Customers obtain ownership

Even if containers and/or caskets become fixtures, transfer of ownership occurs prior to that time, upon the customer's purchase of those items and upon the placement of remains in the casket, and Buchholz, therefore, is liable for sales tax.

As noted, a "sale at retail" is defined as "any transfer made by any person engaged in

business as defined herein of the ownership of, or title to, tangible personal property to the purchaser." Section 144.010.1(10).

The Commission found that "Buchholz did not transfer title in the items until they were affixed to real property" (LF 22). The Commission then discussed this Court's opinions in *State ex rel. Thompson-Stearns-Roger v. Schaffner,* 489 S.W.2d 207, 215 (Mo. 1973) and *Olin Corp. v. Director of Revenue,* 945 S.W.2d 442, 444 (Mo. banc 1997) in connection with ownership. Extrapolating from the facts of these cases, the Commission concluded that "[w]ithout the power to decide who gets title" Buchholz's customers "did not take 'ownership'." (LF 23).

Ownership, however, has to do with more than designating who gets title; *Thompson-Stearns-Roger* and *Olin Corp.* speak in those terms only because government contracts were at issue. *See Thompson-Stearns-Roger v. Schaffner,* 489 S.W.2d at 209; *Olin Corp. v. Director of Revenue,* 945 S.W.2d at 443. Rather, ownership has to do with dominion and control:

> The term "ownership" cannot be said to have a fixed, definite meaning. Its meaning varies in the context in which the term is used. Used here [in the section defining "sale at retail"], with the word "title," the legislative intent must have been to denominate some interest or right other than the so-called "bundle of rights" encompassed by the term "title." According to BLACK'S NEW DICTIONARY (Rev. 4th Ed.), the word "Owner" is not infrequently

> used to describe one who has dominion or control over a thing, the title to which is in another.

Becker Elec. Company, Inc. v. Director of Revenue, 749 S.W.2d 403, 407-408 (Mo. banc 1988). And this record is replete with facts that show that Buchholz's customers obtain such dominion and control – facts that the Commission does not even discuss.

For instance, customers have discretion to determine what type of funeral service, if any, and burial they want for their loved ones. Respondent's Exhibit A – Buchholz's 6-page "General Price List" – demonstrates how this is so. This list shows, for example, that the customer may choose to have remains embalmed or not, or refrigerated or not, depending upon the type of funeral arrangements selected. The customer may also choose to have a funeral held on a federal holiday, or not, though this entails an extra charge. Resp. Exh. A.

Further, Buchholz's own witnesses before the Commission testified that the customer chooses the nature of the service and burial for the deceased. The customer may choose to have a viewing or visitation or services at the funeral home (Tr. 24-25). The customer may also choose to have a religious service of the denomination of his/her choice (Tr. 24). Or, the customer may choose to have the body shipped elsewhere (Tr. 25). And, of course, the customer makes the initial choice of which casket and container will be used (Tr. 15, 22, 27-32).

And as to these choices, and caskets in particular, the customer controls not only where the deceased's remains will go, both for service, if any, and, burial, but where the remains and casket will go as a unit. Once a body is embalmed or prepared, it is placed in a casket (Tr. 23);

after that, the remains and casket go together and stay together.

It is true, as the Commission notes (LF 21) that funeral directing is governed by state regulations that circumscribe what people can and cannot do with dead bodies. *See also* Petitioner's Exhibit 1.[3] So, to the extent that customers (and funeral directors) wish to remain on the right side of the law, they may not for example, force the funeral director to deliver remains in caskets to their homes for storage in a basement or closet. But within the sphere of legality, the customer wholly directs what he/she wants the funeral director to do with his/her loved one's remains and casket. Buchholz cannot do anything with a body that is not permitted by law but, by the same token, Buchholz does not decide that the deceased should be remembered in a Baptist ceremony, or viewed at a wake, or buried in a particular cemetery – the customer does. The Commission's decision gives short shrift to the complete control customers exercise vis à vis arrangements for their dead within the regulatory zone of permitted activities.

True, Mr. Buchholz testified, upon prompting from counsel, that as a funeral director he "directs" and "supervises" what happens with a casket, "oversees" and "controls" transportation of the casket to the cemetery, and "oversees" the burial (Tr. 15-16). But, while

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[3]Because of this, all Buchholz customers incur a non-declinable expense for the cost of basic services, including supervision provided by the funeral director, regardless of the particular funeral package or other funeral and burial arrangements the customer might choose. (Tr. 47).

perhaps invoking the magic incantation of direction or control, Mr. Buchholz's remaining testimony makes plain that any directing or controlling he does occurs after and as a result of the customer's decisions about how to handle the remains and casket. In Mr. Buchholz's words, he is there "to make sure that everything is right for the family" (Tr. 15), and "[w]hatever the family wants is what we do." (Tr. 24).

Moreover, testimony from Buchholz's witness establishes that the customer obtains ownership because disgruntled Buchholz customers may decide – after remains are placed in a casket, but prior to burial – to take their business elsewhere. And, if they do so, they take their loved ones' remains – and the casket – with them. In particular, Mr. Buchholz testified as follows:

By Mr. Clements [counsel for the Director of Revenue]:

Q. If – – if somebody was unhappy with your services – –

A. Okay.

Q. – – and they asked you to deliver the casket and the remains to another home, another funeral home – –

A. A licensed funeral home?

Q. – – a licensed funeral home – – we don't want to do anything improper.

A. Well, I just want to be sure.

Q. If you took it to another – – would you deliver it to the licensed funeral home?

A. It depends on the situation.

Q. If they asked that the other licensed funeral home come to your home and pick up the casket and the body, would you turn that over to the other licensed funeral home?

A. Yes.

(Tr. 26-27).

Mr. Buchholz also testified that if a customer were dissatisfied and he authorized the transfer of a casket, with remains, to a competitor, he would request payment in full at that time (Tr. 50).

As this testimony demonstrates, if a customer becomes dissatisfied with Buchholz's services, the customer can ask Buchholz to turn over the casket and remains to a different funeral home, and Buchholz would do this. While perhaps an unusual occurrence, it is difficult to imagine that Buchholz would turn over a casket (with remains) that the customer did not own (and charge for it, on top of that).

Conclusion

In view of the foregoing, the Director submits that this Court should reverse the decision of the Administrative Hearing Commission awarding a refund to Buchholz in the amount of $101,565.17 and reinstate the Director's determination denying the refund request.

Respectfully submitted,

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Certification of Service and of Compliance with Rule 84.06(b) and (c)

The undersigned hereby certifies that on this 3rd day of January, 2003, one true and correct copy of the foregoing brief, and one disk containing the foregoing brief, were mailed, postage prepaid, to:

Paul Puricelli
Stone, Leyton & Gershman
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St. Louis, MO 63105

The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b), and that the brief contains 4,837 words.

The undersigned further certifies that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses and is virus-free.

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Associate Solicitor

Appendix

Appendix Index

Section 144.010 (10) **"Sale at retail"** means any transfer made by any person engaged in business as defined herein of the ownership of, or title to, tangible personal property to the purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration; except that, for the purpose of sections 144.010 to 144.525 and the tax imposed thereby: (i) purchases of tangible personal property made by duly licensed physicians, dentists, optometrists and veterinarians and used in the practice of their professions shall be deemed to be purchases for use or consumption and not for resale; and (ii) the selling of computer printouts, computer output or microfilm or microfiche and computer-assisted photo compositions to a purchaser to enable the purchaser to obtain for his or her own use the desired information contained in such computer printouts, computer output on microfilm or microfiche and computer-assisted photo compositions shall be considered as the sale of a service and not as the sale of tangible personal property. . . .

144.020. Rate of tax – tickets, notice of sales tax. – 1. A tax is hereby levied and imposed upon all sellers for the privilege of engaging in the business of selling tangible personal property or rendering taxable service at retail in this state. . . .

144.021. Imposition of tax – seller's duties. – The purpose and intent of sections 144.010 to 144.510 is to impose a tax upon the privilege of engaging in the business, in this state, of selling tangible personal property and those services listed in section 144.020. The primary tax burden is placed upon the seller making the taxable sales of property or service and is levied at the rate provided for in section 144.020. Excluding sections 144.070, 144.440 and 144.450, the extent to which a seller is required to collect tax from the purchaser of the taxable property or service is governed by section 144.285 and in no way affects sections 144.080 and 144.100, which require all sellers to report to the director of revenue their **"gross receipts"**, defined herein to mean the aggregate amount of the sales price of all sales at retail, and remit tax at four percent of their gross receipts.